

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 128 of 1998

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?
No

MAGANBHAI GODADBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR VIPUL S MODI for Petitioners
MR UA TRIVEDI, AGP, for Respondents Nos. 1, 2 & 4
MR KG VAKHARIA, SR. ADVOCATE with MR TUSHAR MEHTA for
Respondent No. 6
Respondents Nos. 3 and 5 served

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 31/03/98

C.A.V. JUDGMENT (Per A.R. Dave, J.)

This is a petition by way of public interest
litigation by the petitioners who are members of the

Palanpur, Vadgam, Danta Agricultural Produce Market Committee, which is respondent No.5 in the present petition. The petitioners have been constrained to approach this Court with a grievance that respondent No.5 is incurring wasteful expenditure though it is financially not sound. It has been mainly submitted that Chairman of the Committee, Shri Somabhai Godadbhai Patel, respondent No.6, is proceeding to foreign countries for a study tour at the expenditure to be incurred by the committee. The petitioners have also brought to the notice of this Court several incidents of wasteful expenditures incurred by the committee and its office bearers. The petitioners have given several instances with regard to mismanagement and irregularities committed by the Committee and have prayed that respondent No.1 Government should initiate action under Sec. 46 of the Agricultural Produce Markets Act, 1963 (hereinafter referred to as 'the Act') so that the committee can be superceded. It has also been prayed that the expenditures to be incurred for the study tour of respondent No.6 should be recovered from him.

2. Looking to the facts and circumstances of the case, with consent of the learned advocates, the matter is finally heard today.

3. The facts leading to the case as submitted by Learned Advocate Shri Vipul Modi appearing for the petitioners are as under:-

4. The Palanpur, Vadgam, Danta Agricultural Produce Market Committee was constituted in July 1995 and respondent No.6, the Chairman of the Committee, had taken his charge as Chairman in January 1997. It has been submitted by the Learned Counsel that the term of the present committee is to continue upto July 1999. It has been submitted by the Learned Counsel that the committee is in financial difficulties mainly on account of wasteful expenditures incurred by its office bearers. He has shown several instances with regard to mismanagement and irregularities committed by the office bearers of the committee. To narrate a few, it has been submitted by the Learned Counsel that it was not necessary to have a new vehicle and yet the committee decided to purchase an AC Sumo though the committee was having a jeep which was purchased just before 15 months. It has been submitted by the Learned Counsel that the Chairman and office bearers have to travel only in three talukas of District Palanpur, namely, Vadgam, Danta and Palanpur. For the purpose of travelling in these three talukas neither a new car nor an additional car is required especially when

the committee is not having sufficient funds even to pay its dues to Bank of Baroda.

5. Learned Advocate Shri Modi has also drawn our attention to the fact that, in spite of a direction given by the Deputy Director, Agricultural Marketing and Rural Finance, for curtailing unnecessary expenditure on the foreign study tour, buying new vehicle, employing new staff etc., the committee went on incurring expenditure by employing daily wagers and had also made an effort to recruit persons who had close relations with some of the members of the committee. It has been submitted that the above-referred facts clearly reveal that the committee is not performing its duties satisfactorily and is acting in a manner which would not be in the interest of the committee and its members and, therefore, appropriate action under Sec. 46 of the Act should be initiated by the respondent Government authorities.

6. With regard to foreign study tour of the Chairman of the committee, it has been specifically submitted by Learned Counsel Shri Modi that by a unanimous resolution dated 15.1.1998 passed at the general meeting of the committee, it was decided not to plan any study tour or any other expensive function. A copy of the resolution passed on 15.1.1998 is at page 74 of the paper-book. It has been submitted by Learned Counsel Shri Modi that in the said resolution the general body of the committee had taken note of the fact that the committee was not having sound economic condition and had, therefore, decided to increase market fee and had also decided to discharge all daily wagers employed by the committee. It was also decided not to initiate any procedure for fresh recruitment. It was also decided to see that the telephones allotted to the office bearers of the committee should be used economically and a register should be maintained for STD calls. The above-referred facts duly reveal that financial condition of the committee is not good and therefore the general body had rightly decided that "study tours and other expensive functions shall not be planned".

7. In spite of the above-referred decision taken by the general body, it has been submitted by Learned Counsel Shri Modi that respondent No. 6, Chairman of the Committee, has proceeded on foreign study tour. It has been submitted that in spite of the above-referred resolution, respondent No.6, Chairman of the Committee, had made a representation on 19.1.1998 to the respondent Government requesting the government to allow him to undertake the foreign study tour. The said request was

definitely against the decision taken by the committee on 15.1.1998.

8. In the circumstances, it has been submitted that respondent No. 6, Chairman of the Committee, should not be permitted to have the said study tour at the cost of the committee and whatever amount the committee has spent for the said study tour should be recovered from the Chairman.

9. During pendency of the petition, on 21.1.1998, this Court had permitted respondent No.6, Chairman of the Committee, to proceed for the foreign study tour by observing "if sixth respondent is utilising any money of the Agricultural Produce Marketing Committee for undertaking foreign tour, he must execute a bond in favour of the Marketing Committee that he will reimburse the Marketing Committee the entire amount which has been spent on him, in case the decision of this Court in this special civil application goes against him. 5th respondent should see that no amount is advanced to the 6th respondent for enabling him to undertake the foreign trip unless he executes a bond, as stated earlier."

10. We have been informed by the Learned Counsel that the Chairman has already proceeded for the study tour.

11. In pursuance of notice issued by this Court, Sr. Advocate Shri Vakharia has appeared for respondent No.5. An affidavit has been filed by respondent No.6, Chairman of the Committee on behalf of respondent No. 5. It has been submitted in the affidavit-in-reply filed by the Chairman of respondent No.5 committee, that the petition is premature as the petitioners have already approached the respondent government with the grievances which have been ventilated in the present petition. It has been submitted by Mr. Vakharia that before the government can take any action on the application filed by the petitioners, the petitioners have rushed to this Court and, therefore, the petition is premature. It has also been submitted that because of political rivalry, the present petition has been filed. It has also been submitted that one of the reasons for poor financial condition of the committee is default committed by the petitioners themselves as they have not paid their dues to the committee. It has also been submitted that the study tour had been organised at the instance of the Gujarat State Agricultural Marketing Board established under the provisions of Sec. 34 of the Act. Sr. Advocate Shri Vakharia appearing for the committee has submitted that the Board is a statutory board which

organises foreign tours so as to see that office bearers of agricultural produce market committees are updated with knowledge in the field of agricultural activities and marketing of agricultural products. It has been stated that 75% of the expenditure to be incurred by the office bearers proceeding for such a study tour is borne by the concerned committee whereas 25% of the expenditure is to be borne by the person proceeding for such a tour. Thus, 75% of the expenditure to be incurred by the Chairman is to be borne by the committee whereas 25% of the expenditure is to be borne by respondent No.6 himself. It has been submitted on behalf of the committee that necessary sanction was granted for the foreign study tour by the respondent government and, therefore, it cannot be said that the foreign study tour of the Chairman is illegal or improper. Thus, Sr. Advocate Shri Vakharia has made an effort to show that the financial position of the committee is not as bad as depicted by the petitioners and the petitioners are the causa causans for poor financial position of the committee. He has also stated that now the committee has stopped recruiting new employees and has also stopped having services of daily wage labourers. Thus, all possible efforts have been made by the committee to see that wasteful expenditures are not incurred and the directions given by the authorities under the Act are being complied with.

12. Ld. A.G.P. Shri Trivedi appearing for the respondent Government authorities has relied upon two affidavits filed on behalf of the government authorities. First affidavit has been filed by Shri G.K. Fakir, Director, Agricultural Marketing and Rural Finance, whereas another affidavit has been filed by Shri K.V. Makwana, Jt. Secretary, Agricultural and Co-operation Dept. of the respondent government.

13. From the affidavit-in-reply filed by Shri Fakir, respondent No. 2 herein, it is clearly revealed that certain information with regard to alleged irregularities committed by the committee was received by him from the Dy. Director and District Registrar of Co-operative societies under letter dated 28.10.97. In pursuance of the information received by him, he had called for an explanation from the committee under his letter dated 9.12.1997. The committee had given its explanation under letter dated 17.12.1997. It appears that the Director, respondent No.2, was not satisfied with the explanation offered by the committee and therefore certain directions were given to the committee by respondent No.2 under provisions of Sec. 45 of the Act. The communication

addressed by respondent No.2 to the committee dated 3.1.1998 has been annexed as Annexure II to the affidavit-in-reply of respondent No.2. Upon perusal of the said communication and directions issued under provisions of sec. 45 of the Act, it is clear that the committee was directed not to incur expenditure on study tour and not to organise any expensive seminar as financial position of the committee was not sound. It was also directed under the said communication that hospitality expenditure and other unnecessary expenditure should not be incurred by the committee. Moreover, it was also directed to maintain up-to-date log book for all vehicles. It was also advised that the telephones allotted to the Chairman and the Secretary of the committee at their residences should be used economically and a register should be maintained for recording details with regard to telephone calls made. The above-referred directions had to be given by the Director as, in view of the Director, unnecessary expenditure was being incurred by the committee and financial position of the committee was not sound. It has also been stated by respondent No.2 in his affidavit-in-reply that he had recommended initiation of appropriate action under provisions of sec. 46 of the Act against the committee. In opinion of respondent No. 2, there is a case for supersession of the committee.

14. Affidavit-in-reply has also been filed by respondent No.1 Government. On behalf of respondent No.1 government, Shri K.V. Makwana, Jt. Secretary, Agricultural and Co-operation Dept. of the State of Gujarat has filed the affidavit stating the fact that as respondent No. 6, Chairman of the Committee, had assured the respondent government that by the end of March 1998, the committee would raise its income by Rs. 3 crores and will pay the overdue debt of Bank of Baroda, the respondent government had permitted the Chairman to proceed for the foreign study tour. It has also been submitted in the said affidavit that respondent No.2 had proposed initiation of proceedings under sec. 46 of the Act and the said proposal was under scrutiny of the respondent government. It has been specifically stated that as the matter was under consideration, the respondent government would take an appropriate decision on the said proposal.

15. After hearing the concerned advocates, prima facie it appears that the financial condition of the committee is not sound. It is also crystal clear from the affidavits filed by the respondent government authorities that the committee was incurring unnecessary

expenditure and was not managing its affairs in a prudent manner. Wasteful expenditures were being incurred by the committee and, therefore, the committee had been directed by respondent No.2 Director to restrain itself from incurring certain types of expenditure. As a matter of fact, in normal circumstances, the committee should have acted in a manner which would not have warranted any authority under the Act to give such a direction to the committee. The fact that certain directions had to be given by respondent No.2 to the committee under provisions of sec. 45 of the Act, clearly denotes that the committee was not performing its duties sincerely and scrupulously and was not using its funds in a prudent manner. In the above-referred circumstances, respondent No.2 had also proposed an action under sec. 46 of the Act so that the committee can be superseded by the respondent government in accordance with law. Though the proposal for taking action under sec. 46 of the Act was sent by respondent No. 2 to respondent No.1 Government under letter dated 19.1.1998, no final decision was taken by the government till 17.2.1998 when affidavit-in-reply was filed on behalf of respondent No. 1. Even at the time of hearing, when learned AGP Shri Trivedi was asked whether the respondent government had taken any action on the proposal forwarded by respondent No.2 with regard to initiation of proceedings under sec. 46 of the Act against the committee, learned AGP had frankly admitted that no decision was taken by the respondent government with regard to initiation of proceedings under sec. 46 of the Act.

16. It is pertinent to note that respondent No.2 had directed the committee not to incur expenditure on foreign study tour under his communication dated 3.1.1998 and the committee itself had decided in a general body meeting on 15.1.1998 not to plan any study tour or incur expenditure over functions. Yet, respondent No.6 had requested respondent No.1 government under his letter dated 19.1.1998 for permission to undertake foreign study tour. The Chairman had given an assurance to the respondent government that the committee would raise its income by Rs. 3 crores and would also pay the overdue debt of Bank of Baroda by the end of March 1998. When Ld. Sr. Advocate Shri Vakharia was asked whether the committee had raised its income as assured by the Chairman and had made payment to the bank, Ld. Sr. Advocate Shri Vakharia submitted that as per the assurance given by the Chairman to the respondent government, overdue amount was to be paid by the end of March 1998. For the reasons best known to him, he did not give any detail about the dues paid even till the day

when this matter was being heard. Let it be noted that in November 1997, debt which was due and payable by the committee and which was yet not paid was more than Rs. 1.22 crores.

17. In the above-referred circumstances, what this Court has to examine is whether participation of respondent No.6 in the foreign study tour was in the interest of the committee. Normally those who are in the public life are supposed to act in a manner which would befit real public spirited persons. They have to behave as prudent administrators and have to act as trustees of the funds which are placed at their disposal. The committee has been constituted under provisions of the Act so as to regulate buying and selling of agricultural products and manage establishment and effective maintenance of markets for agricultural produce in the State of Gujarat. The object behind formation of the committee is to see that not only the activities referred to hereinabove are properly regulated but members of the committee who are agriculturists and traders are also organised and the agriculturists are not exploited. So as to see that the purpose of the Act is duly fulfilled, certain authorities have been established under the Act to supervise and control their activities. Thus, one of the intentions behind formation of such committees is to see that the agriculturists who are members of the committee are not exploited by others. Here in the instant case, funds of the committee or funds belonging to the members of the committee are being spent by the Chairman in a manner which would not befit any of the objects of the Act. No prudent man would ever think of having a foreign tour especially when his financial position is not sound. In the instant case, the committee had taken a positive decision not to plan any foreign tour and the said decision, in our opinion, was absolutely sound. The said decision was taken in pursuance of a direction given by respondent No.2. Moreover, in pursuance of letter dated 2.1.98 written by respondent No. 2 to the government, the government had in fact cancelled the permission under its letter/order dated 9.1.98. In spite of the direction of Respondent No. 2 and the decision taken by the committee, respondent No.6 approached, perhaps in a clandestine manner, respondent No.1 and procured necessary permission for having a foreign tour, perhaps without placing all relevant facts on record. It is also very strange that application given by respondent No.6 Chairman on 19.1.1998 was promptly scrutinised and necessary permission was granted by the respondent government on 21.1.98 without considering the contents of letter dated

19.1.1998 addressed to the government by Respondent No. 2 proposing initiation of proceedings under sec. 46 of the Act against the committee. The said letter was actually received by the concerned department on 20.1.98. It is difficult for any one to understand as to how application dated 19.1.98 was granted by the government so promptly and permission was given to respondent No.6 to proceed for his foreign study tour in spite of the fact that respondent No.2 had recommended supersession of the committee of which respondent No.6 was the Chairman. It appears that either the respondent government had acted carelessly and in hot haste by not calling for detailed report from respondent No.2 before granting its sanction to the application given by the Chairman or had decided to show undue favour to the Chairman by grant of permission in spite of knowing the circumstances and state of affairs of the committee at the relevant time.

18. Office bearers of the committee are trustees of the funds put at their disposal for their effective management and use. Funds and properties of the committee ought to have been used in a manner in which a prudent person would use the same as a trustee. The trustee is accountable and answerable to the beneficiary of the funds when he uses the trust funds. No trustee can be permitted to use the trust funds for his own benefit or enrichment. Use of committee funds for personal benefit or enrichment is nothing but corruption. Such corruption would invariably arrest and would often retard the process of development or prosperity of the committee. The Act was enacted to protect interest of weak and scattered agriculturists and traders. If abuse of funds of the committee is permitted, the Act would make those poor agriculturists poorer and would also make the ultimate consumer to suffer because payment of all fees to the committee ultimately results into increase in the price of the produce. The object of economic betterment of poor agriculturists would be frustrated if the office bearers of the committee, who are in a position of trustees, are permitted to use funds of the committee for their betterment or advantages. In our opinion abuse of power which ultimately results into personal enrichment of someone must be strongly curbed.

19. As respondent No.2 has proposed initiation of action under provisions of Sec. 46 of the Act against respondent No. 5 committee, it would not be appropriate on our part to discuss the allegations regarding abuse of power, irregular or illegal appointments made by the committee, etc. at this stage. Looking to the facts of the case, we direct respondent No.1 government to

initiate appropriate action under sec. 46 of the Act with regard to supersession of the committee within a period of 15 days from the date of receipt of a copy of this judgment by respondent No.1. While initiating the said proceedings, the respondent government shall take into account the proposal made by respondent No.2 and the allegations made in this petition.

20. Looking to the fact that the committee had decided not to permit any foreign study tour and as respondent No.6 had procured permission from respondent No.1 government for proceeding to foreign countries, in our opinion, it would not be proper to permit respondent No.6 to use money belonging to the committee for his study tour abroad. In our opinion, respondent No.1 government cannot constrain the committee to spend for the study tour especially when the general body of the committee had unanimously decided that no expenditure should be incurred for foreign tour. In the above-referred circumstances, in our opinion, even if respondent No.1 government has permitted respondent No.6 to proceed for foreign study tour, in any case, the committee shall not reimburse the expenditure which might have been incurred by respondent No.6 and if any amount has already been paid by the committee to respondent No. 6, the said amount shall be recovered from respondent No. 6 within one month from the date of arrival of respondent No. 6 in India. In other words, we clarify that the entire expenditure of the study tour shall be borne by respondent No. 6 personally.

21. In the circumstances, the petition is allowed.
Rule is made absolute with no order as to costs.

(K. Sreedharan, C.J.)

(A.R. Dave, J.)

(HN)